

United States
Circuit Court of Appeals
For the Ninth Circuit.

QUAN TOON JUNG,

Appellant,

vs.

R. P. BONHAM, District Director of Immigration
and Naturalization at the Port of Seattle,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division

FILED

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United States
Circuit Court of Appeals
For the Ninth Circuit.

QUAN TOON JUNG,

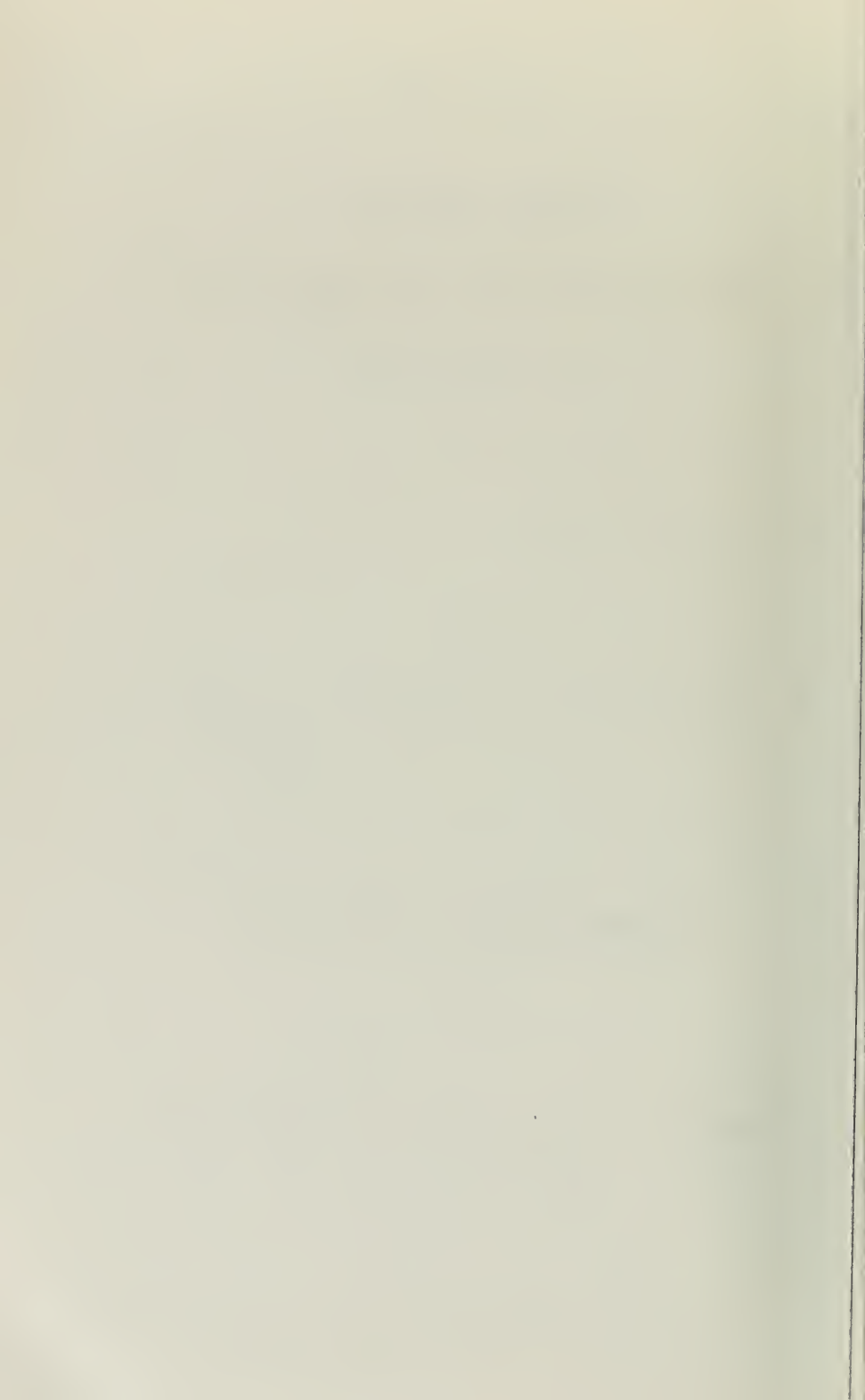
Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

FRED H. LYSONS,

709-10 Lowman Bldg.,
Seattle, Washington,
Attorney for Appellant.

J. CHARLES DENNIS,

U. S. Attorney,

and

GERALD SHUCKLIN,

Assistant U. S. Attorney,
1012 Court House Bldg.,
Seattle, Washington,
Attorneys for Appellee. [1*]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 186

In the matter of the Application of

QUAN TOON JUNG

For Writ of Habeas Corpus.

PETITION FOR WRIT.

To the Honorable Judge of the Above Court:

Comes now your petitioner, Quon Toon Jung
and files this his petition for writ of habeas corpus,
and respectfully represents and shows:

*Page numbering appearing at foot of page of original certified
Transcript of Record.

1. That he is a citizen of the United States, being the son of Quan Siew, a native born citizen of the United States.

2. That on or about July 10, 1939, petitioner arrived at the Port of Seattle from China, and then and there applied to the Commissioner of Immigration at said port for admission to the United States, presenting and submitting to the Board of Special Inquiry duly convened for the purpose, testimony and evidence convincing of his said citizenship.

3. That notwithstanding such testimony and evidence proving the said citizenship of your petitioner, and notwithstanding that said testimony and evidence stood and now stands uncontradicted by any material testimony, said Board of Special Inquiry and said Commissioner of Immigration did on or about December 13, 1939, deny his application for admission and made an order rejecting the same and directing that he be deported to China.

4. That said order of rejection and deportation was made without any material evidence to support it, being based wholly and solely upon alleged discrepancies in the testimony in support of petitioner's application for admission.

5. That thereupon appeal was taken by petitioner from said [2] order to the Honorable Secretary of Labor, who with full knowledge of the rights of petitioner as aforesaid, did capriciously and wrongfully, arbitrarily dismiss said appeal and affirm said order of deportation; all in legal disregard of the right of petitioner to admission to the United States as aforesaid.

6. That petitioner is now detained, imprisoned, confined and restrained of his liberty by Honorable Marie A. Proctor as Commissioner of Immigration at said Port of Seattle, said detention, confinement, imprisonment and restraint not being based upon or under any process issued by or any final judgment of a court of competent jurisdiction, nor for contempt of any court or body having competent authority in the premises to commit, or upon a warrant issued from this court or from any court upon any indictment or information.

7. That petitioner has deposited with the said Commissioner of Immigration at the Port of Seattle the sum of one hundred dollars as maintenance charges and expenses pending this proceeding.

Wherefore, your petitioner prays that an order be issued herein directing and commanding the said Commissioner of Immigration aforesaid to be and appear herein on the 18th day of March, 1940, at the hour of ten o'clock in the forenoon of said day, and show cause why a writ of habeas corpus should not issue herein, and to do and receive what shall be then and there be considered concerning this petitioner; and that pending such hearing the said Honorable Commissioner of Immigration be restrained from deporting your petitioner, Quan Toon Jung, upon payment in advance by him of the charges and expenses of his detention.

FRED H. LYSONS,
Attorney for Petitioner. [3]

State of Washington,
County of King—ss.

Quan Toon Jung being first duly sworn on his oath deposes and says: That he is the petitioner named in the foregoing petition; that he has heard the same read, knows the contents thereof and believes the same to be true.

QUAN TOON JUNG.

Subscribed and sworn to before me this February
....., 1940.

FRED H. LYSONS,
Notary Public.

[Endorsed]: Filed Mar. 21, 1940. [4]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon reading and filing the petition of Quan Toon Jung for writ of habeas corpus herein, it is made therein to appear that said Quan Toon Jung is wrongfully and unlawfully imprisoned, confined and restrained of his liberty by Honorable Marie A. Proctor as Commissioner of Immigration of the Port of Seattle, in the Immigration Station of said Port, and it appearing that petitioner has deposited the sum of one hundred dollars as and for his maintenance charges and expenses pending this proceeding.

Now, therefore, it is by the Court ordered that the said Honorable Marie A. Proctor as Commissioner of Immigration as aforesaid show cause be-

fore this Court on the 19th day of April, 1940, at the hour of nine o'clock in the forenoon of said day, or as soon thereafter as said petition may be heard, why a writ of habeas corpus should not issue herein as prayed for, and why said Quan Toon Jung should be further restrained and detained; and until the further order of this Court, the said Commissioner of Immigration shall be and she is hereby restrained and enjoined from deporting the said Quan Toon Jung, provided his maintenance and expense charges are paid to said Commissioner in advance.

Done in open Court this March 22, 1940.

LLOYD L. BLACK,
Judge.

Presented by

FRED H. LYSONS,
Atty. for Petitioner.

[Endorsed]: Filed Mar. 22, 1940. [5]

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

To the Honorable John C. Bowen, Judge.

Comes now the respondent, Marie A. Proctor, as United States Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, and, for answer and return to the Order to Show Cause entered herein, certifies that the said Quan Toon Jung has been detained by this respondent

since the time he arrived from China at the Port of Seattle, Washington, to-wit: July 10, 1939, as an alien Chinese person not entitled to admission into the United States under the laws of the United States, pending a decision on his application for admission as a citizen on his claim of being the foreign born son of a native born citizen of the United States named Quan Siew; that, at a hearing before a Board of Special Inquiry at the Seattle Immigration Station the said Quan Toon Jung failed to present satisfactory proof that he is the soon of his alleged father, and his application for admission into the United States was denied for that reason and (2) on the additional ground that he is an alien ineligible to citizenship not a member of any of the exempt classes specified in Section 13(c) of the Immigration Act of 1924 (8 U. S. C. A. 213); that the said Quan Toon Jung appealed from the said decision of the Board of Special Inquiry to the Secretary of Labor and thereafter the decision of the Board of Special Inquiry was affirmed by the Assistant Secretary of Labor and the said Quan Toon Jung was ordered deported to China; that since the final decision of the Assistant Secretary of Labor, respondent was held, and now holds and detains the said Quan Toon Jung for return to China as an alien Chinese person not entitled to admission into the United States, and subject to return to China under the laws of the United States.

The original record of the Secretary of the Department of Labor, and all exhibits, both on the hearing before the Board of Special Inquiry at Seattle, Washington, and on the submission of the record on appeal to the Secretary of Labor at Washington, D. C., in the matter of the application of Quan Toon Jung for admission into the United States are hereto attached and made a part and parcel of this Return as fully and completely as though set forth in detail.

Wherefore, respondent prays that the petition for a Writ of Habeas Corpus be denied.

(Sgd) MARIE A. PROCTOR.

United States of America,
Western District of Washington,
Northern Division—ss.

Marie A. Proctor, being first duly sworn on oath deposes and says: That she is the United States Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, and the respondent named in the foregoing Return; that she has read the foregoing Return, knows the contents thereof and believes the same to be true.

(Sgd.) MARIE A. PROCTOR.

Subscribed and sworn to before me this 29th day of March, 1940.

(Seal) (Sgd.) D. L. YOUNG,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Apr. 4, 1940. [7]

[Title of District Court and Cause.]

MOTION THAT PETITIONER BE ALLOWED
BAIL

To the Honorable Judge of the above Court:

Comes now your petitioner Quan Toon Jung by Fred. H. Lysons his attorney, and moves that petitioner be admitted to bail herein, and sum and amount to be fixed by the Court.

This motion is made and based upon the fact that under the common and usual procedure followed prior to May 5, 1892, in Chinese immigration cases such as this, application to the Court for writ of habeas corpus was made immediately following denial of admission by the local Departmental authority and without applicant having pursued Department procedure to conclusion through appeal to the Department head in Washington.

FRED. H. LYSONS,
Attorney for Petitioner.

Received a copy of the within Motion this 16 day of Apr., 1940.

J. CHARLES DENNIS,
Attorney for Respondent.

Presented by
FRED. H. LYSONS,
Attorney for Petitioner.

[Endorsed]: Filed Apr. 16, 1940. [8]

[Title of District Court and Cause.]

ORDER DENYING BAIL

This cause having duly come on for hearing before this Court on the 23d day of April, 1940, upon the petitioner's motion and petition that pending hearing on his petition for a writ of habeas corpus he be admitted to bail in a sum and amount to be fixed by the Court, and the Court being fully advised in the premises directed that the motion and petition be denied.

Therefore, it is by this Court ordered and adjudged that the said motion and petition to admit to bail pending hearing and determination of the petition for a writ of habeas corpus be and the same is hereby denied.

Done in open Court this 27th day of May, 1940.

LLOYD L. BLACK,

Judge.

O. K. as to form.

Copy received this 27 day of May, 1940.

FRED H. LYSONS,

Attorney for Petitioner.

Presented by

GERALD SHUCKLIN,

Assistant United States Attorney.

[Endorsed]: Filed May 27, 1940. [9]

[Title of District Court and Cause.]

MOTION FOR REOPENING AND REARGUMENT OF PETITIONER'S MOTION FOR ENLARGEMENT ON BAIL.

To the Honorable Lloyd L. Black, Judge of the above Court:

Comes now your petitioner Quan Toon Jung by his Attorney Fred. H. Lysons and respectfully moves the Court for reopening and reargument of petitioner's motion heretofore presented herein for enlargement on bail.

This motion is made and based upon judicial authority pertinent to the issue, which has come to the attention of counsel since the presentation and argument of the motion, and which counsel feels should be presented and argued in justice to the Court and to petitioner.

FRED. H. LYSONS,
Attorney for Petitioner.

Presented by
FRED H. LYSONS,
Lowman Building.

Received a copy of the within Motion this 30 day of Aug. 1940.

J. CHARLES DENNIS,
Attorney for Respondent.

[Endorsed]: Filed Aug. 30, 1940. [10]

[Title of Cause.]

ORDER DENYING BAIL

Now on this 7th day of October, 1940, Gerald Shucklin, Assistant United States Attorney appearing for the Government, Attorney Fred H. Lysons appearing for the petitioner, this cause comes on before the Court for hearing on motion for reopening and reargument of petitioner's motion for enlargement on bail. Argument is heard thereon. The court states that the denial of the writ heretofore announced is continued in effect. Bail is denied.

The foregoing is a true copy taken from Journal 28, page 28.

* * * * *

Oct. 7, 1940, Denial of writ as heretofore announced is continued in effect. Bail denied.

The foregoing is a true copy of docket entry taken from Civil Docket No. 1, page 186. [11]

* * * * *



[Title of District Court and Cause.]

ORDER DENYING WRIT OF HABEAS
CORPUS

This cause having duly come on for hearing before this Court on the 8th day of November, 1940, upon the Return of the United States Commissioner of Immigration and Naturalization to the Order to Show Cause theretofore entered herein,

the respective parties being represented by Fred H. Lysons for the Petitioner, and J. Charles Dennis and Gerald Shucklin, United States Attorney and Assistant United States Attorney, respectively, for the Respondent, and the Court being fully advised in the premises directed that the Writ of Habeas Corpus be denied.

Now, therefore, it is by this Court ordered, adjudged and decreed that the said Order to Show Cause be, and the same is hereby dismissed. It is also further ordered, adjudged and decreed that the Writ of Habeas Corpus as prayed for be, and the same is hereby denied; provided, however, that the petitioner may, within thirty (30) days, file notice of appeal, and, in the event that appeal be taken, and on condition that the petitioner shall deposit with the District Director of Immigration and Naturalization such sum or sums of money as may be required for said petitioner's maintenance at the Seattle, Washington, Immigration Station during the pendency of said Appeal, deportation shall be stayed pending the determination of said Appeal by the United States Circuit Court of Appeals for the Ninth Circuit, or by the United States Supreme Court should the cause be taken to that court on appeal. [12]

Done in open court this 18th day of November, 1940.

LLOYD L. BLACK,
United States District Judge.

Presented by:

GERALD SHUCKLIN,

Assistant United States Attorney.

O. K. as to form.

Copy received this 16 day of November, 1940.

Attorney for Petitioner,

FRED H. LYSONS,

By E. T. D.

[Endorsed]: Filed Nov. 18, 1940. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Honorable R. P. Bonham, District Director of Immigration & Naturalization at the Port of Seattle, and to the Honorable J. Charles Dennis, United States District Attorney for the Western District of Washington:

You, and each of you, are hereby notified that Quan Toon Jung, appellant above named, has appealed and does hereby appeal from that certain order made herein by the above entitled court on the 18th day of November, 1940, denying writ of Habeas Corpus, and from that certain order entered herein October 7, 1940, denying bail to petitioner herein, and from each and every part of said orders and from all rulings and orders in said

cause adverse to appellant to the United States Circuit Court of Appeals for the Ninth Circuit.

(Sgd.) FRED H. LYSONS

Attorney for Appellant.

Due service admitted this Nov. 29, 1940.

J. CHARLES DENNIS

US Attorney

[Endorsed]: Filed Nov. 29, 1940. [14]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Petitioner herein having filed his motion that appeal be allowed him to the United States Circuit Court of Appeals for the Ninth Circuit,

It is by the Court Ordered that the appeal herein be allowed as prayed for.

Done in open Court this 6th day of December, 1940.

LLOYD L. BLACK

Judge.

Presented by

FRED H. LYSONS

Attorney for Appellant

O.K.

J. CHARLES DENNIS

U. S. Attorney

GERALD SHUCKLIN

Asst. U. S. Attorney

[Endorsed]: Filed Dec. 6, 1940. [15]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the petitioner and respectfully makes this his assignments of error, in that the Court erred:

- 1) In discharging the rule to show cause herein.
- 2) In ruling that there was evidence before the Board of Special Inquiry that petitioner was not a citizen of the United States and that he was not entitled to admission to the United States as such citizen.
- 3) In holding and ruling that the warrant of deportation issued by the Secretary of Labor was warranted and authorized by law.
- 4) In refusing to hold that petitioner was denied a fair and impartial hearing.
- 5) In holding and deciding that petitioner is not entitled to be enlarged upon bail, and in denying petitioner's application that he be so enlarged and admitted to bail.
- 6) In holding and deciding that the Court is without jurisdiction in this proceeding.
- 7) In denying petitioner's prayer for writ of habeas corpus.

Dated at Seattle, Washington, this 6th day of December, 1940.

FRED H. LYSONS

Attorney for Appellant

Received a copy of the within Assignment of Errors this 11 day of Dec. 1940.

J. CHARLES DENNIS

Attorney for Respondent.

[Endorsed]: Filed Dec. 11, 1940. [16]

[Title of District Court and Cause.]

STIPULATION FOR TRANSMISSION OF
RECORD

It is hereby stipulated by and between the parties hereto that the certified original file and other records of the Department of Labor covering the exclusion and deportation proceedings against petitioner herein which were filed with and made a part of the return of the United States Commissioner of Immigration to the Order to Show Cause may be transmitted with the appellant record herein and may be considered by the United States Court of Appeals in lieu of certified copies of said original file and other records of the Department of Labor.

Dated at Seattle, Washington, this 7th day of December, 1940.

FRED H. LYSONS

Attorney for Appellant

J. CHARLES DENNIS

United States Attorney

GERALD SHUCKLIN

Assistant United States Attorney

Attorneys for Appellee.

[Endorsed]: Filed Dec. 5, 1940. [17]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF RECORDS

Upon stipulation of counsel therefor, it is by the Court

Ordered, that the Clerk of the above-entitled Court transmit with the appellant record in the said cause, the certified original Immigration and other records of the Department of Labor covering and relating to the exclusion and deportation proceedings against Quon Toon Jung which were filed with and made a part of the return of the United States Commissioner of Immigration to the order *the* show cause herein, directly to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in order that the said original Immigration file and records may be considered by the said Circuit Court of Appeals in lieu of certified copies of the same.

Done in open Court this 5th day of December, 1940.

LLOYD L. BLACK

Judge.

Presented by:

FRED H. LYSONS

Attorney for Appellant

OK

J. CHARLES DENNIS

U.S. Atty.

GERALD SHUCKLIN,

Asst. U.S. Atty.

[Endorsed]: Filed Dec. 5, 1940. [18]

[Title of District Court and Cause.]

PRAECIPE OF APPELLANT FOR TRANSMISSION OF RECORD ON APPEAL

To the Clerk of the above entitled Court:

You will please prepare and duly authenticate the transcript and the following portions of the record in the above entitled cause for the appeal of appellant heretofore allowed, for the United States Circuit Court of Appeals for the Ninth Circuit:

- 1) Petition for writ of habeas corpus,
- 2) Order to Show Cause,
- 3) Return to order to show cause,
- 4) Order denying petition for writ of habeas corpus,
- 5) Motion that petitioner be enlarged on bail,
- 6) Order denying bail,
- 7) Application to reargue and grant, motion for bail,
- 8) Court minute entry of October 7, 1940, denying bail,
- 9) Docket entry of October 7, 1940, denying bail,
- 10) Notice of appeal,
- 11) Assignment of errors,
- 12) Stipulation for transmission of record,
- 13) Order for transmission of record,
- 14) This praecipe,
- 15) Order allowing appeal.

FRED H. LYSONS

Attorney for Appellant

Received a copy of the within Paecipe this 6th day of Dec., 1940.

J. CHARLES DENNIS

Attorney for Appellant

[Endorsed]: Filed Dec. 6, 1940. [19]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of
Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 19 inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of the said District Court at Seattle, and that the same constitute the record on appeal herein from the Order Denying Petition for Writ of Habeas Corpus of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making and comparing record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States [20] Circuit Court of Appeals for the Ninth Circuit, to wit:

Clerk's fees (Act of Feb. 11, 1925) for prepar-	
ing and comparing 14 folios at 15¢.....	\$2.10
for comparing 21 folios at .05¢.....	1.05
Appeal Fee (Sec. 5 of Act).....	5.00
Certificate of Clerk to Transcript of Record....	.50
Certificate of Clerk to Original Exhibits.....	.50
	—
Total	\$9.15

I hereby certify that the above cost of preparing and certifying the record, amounting to \$9.15 has been paid to me by the attorney for the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the *official* of said District Court at Seattle, this 12th day of December, 1940.

[Seal] MILLARD P. THOMAS,

Clerk,

By: ELMO BELL,

Deputy. [21]

[Endorsed]: No. 9700. United States Circuit Court of Appeals for the Ninth Circuit. Quan Toon Jung, Appellant, vs. R. P. Bonham, District Director of Immigration and Naturalization at the Port of Seattle, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed December 16, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9700

QUON TOON JUNG,

Appellant,

vs.

R. P. BONHAM, as Commissioner, etc.,

Respondent.

STATEMENT OF POINTS RELIED UPON

Comes now the appellant, Quon Toon Jung, and through his attorney Fred H. Lysons adopts the assignment of errors heretofore made as his assignment of points to be relied upon on appeal.

Dated December 6, 1940.

FRED H. LYSONS

Attorney for Appellant.

Received a copy of the within Statement of Points this 30 day of Dec., 1940.

J. CHARLES DENNIS

Attorney for Respondent

[Endorsed]: Filed Dec. 31, 1940. Paul P. O'Brien, Clerk. [22]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED

Appellant in the above entitled cause respectfully designates that all the record be printed on appeal in this cause.

Dated December 6, 1940.

FRED H. LYSONS

Attorney for Appellant

Received a copy of the within Designation of Record this 30 day of Dec., 1940.

J. CHARLES DENNIS

Attorney for Respondent

[Endorsed]: Filed Dec. 31, 1940. Paul P. O'Brien, Clerk. [23]